

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	:	13 Civ. 1612 (PAC) (JCF)
VICTOR KOLTUN,	:	
	:	
Plaintiff,	:	
	:	
- against -	:	REPORT AND
	:	RECOMMENDATION
	:	
JEFFREY BERRY, et al.,	:	
	:	
Defendants.	:	
-----	:	
TO THE HONORABLE PAUL A. CROTTY, U.S.D.J.:	:	

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 4/6/16

In his original complaint in this action, the plaintiff, Victor Koltun, asserted claims against several defendants, including two criminal defense attorneys who had previously represented him, Paul Brite and James Winslow. These defendants moved to dismiss the complaint, and in a Report and Recommendation dated July 19, 2013, I recommended that their motions be granted. (Report and Recommendation dated July 19, 2013 ("7/19/13 R&R")¹ at 20). I did not recommend that the plaintiff be permitted to replead his claims against these defendants. (7/19/13 R&R at 9, 20). By contrast, in a Report and Recommendation dated October 25, 2013 (Report and Recommendation dated October 25, 2013 ("10/25/13 R&R")), I recommended that claims of false arrest and supervisory liability asserted against certain defendants affiliated with the

¹ There is also a second report and recommendation issued on the same date that relates to certain judges that Mr. Koltun named as defendants.

Newburgh Police Department and New York State Police be dismissed without prejudice to the plaintiff filing an amended complaint that might cure the defects in those claims. (10/25/13 R&R at 30). The Honorable Paul A. Crotty, U.S.D.J., subsequently adopted the recommendations in full. (Order Adopting Reports and Recommendations dated March 21, 2014).

Thereafter, the plaintiff "objected," and asked to "amend the complaint to revisit any and all claims against all defendants that are liable." (Undated Letter of Victor Koltun, Docket no. 119). I denied that request and stated, "By November 20, 2015, plaintiff shall submit an amended complaint consistent with the Court's March 21, 2014 Order. Any claims inconsistent with that order shall be dismissed sua sponte." (Order dated Oct. 20, 2015). Nevertheless, Mr. Koltun has filed what is styled a "Second Amended Complaint" in which he includes claims against Mr. Brite and Mr. Winslow identical to those previously dismissed. Counsel for each of these defendants has submitted a letter requesting that the claims against their clients be dismissed (Letter of Ronald W. Weiner dated Jan. 11, 2016; Letter of Erin A. O'Leary dated April 4, 2016), and Mr. Brite has filed a formal motion to that effect (Docket no. 176).

Because the claims against Mr. Brite and Mr. Winslow were previously dismissed with prejudice, I recommend that their

applications be granted, and all claims asserted against them in the Second Amended Complaint be dismissed. Pursuant to 28 U.S.C. § 636(b)(1) and Rules 72, 6(a), and 6(d) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from this date to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court, with extra copies delivered to the chambers of the Honorable Paul A. Crotty, Room 1350, and to the chambers of the undersigned, Room 1960, 500 Pearl Street, New York, New York 10007. Failure to file timely objections will preclude appellate review.

Respectfully submitted,


JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
April 6, 2016

Copies mailed this date to:

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